

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BRIAN R MILLER
Claimant

APPEAL NO. 14A-UI-08963-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARTELS LUTERAN HOME INC
Employer

OC: 08/03/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bartels Lutheran Home (employer) appealed a representative's August 21, 2014 (reference 01) decision that concluded Brian Miller (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 2, 2014. The claimant participated personally. The employer participated by Veronica Shea, Human Resource Generalist. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 30, 2014 as a full-time cook. The claimant signed for receipt of the employer's handbook on April 30, 2014. The employer did not issue the claimant any warnings during his employment.

On August 1, 2014 the claimant was working when two minor female employees approached. The first minor complained to the claimant about the dishwashing machine. The second minor yelled at the manager on duty and then turned to the claimant. She complained about the bread and said, "Look at this fucking bread. How are these fucking residents going to eat this shit?" The claimant had dealt with the issues of the bread and the dishwashing machine. The minors had not been working at an appropriate speed and the claimant said so. The claimant said, "You guys are pissing me off. Unless you've done this for 30 years, just go and do your job and leave me alone." The second minor started walking around with a piece of the bread in plastic wrap and talking about a harassing work place. The manager on duty asked the claimant what that was all about. The claimant said they would probably find out on Monday morning.

On August 4, 2014 the minor females complained to the employer that on August 1, 2014 the claimant confronted, swore, and screamed at them. They both wrote statements for the employer. The manager on duty was questioned and she said she had no knowledge that any of this happened. The employer decided to terminate the claimant before questioning the claimant. The employer terminated the claimant on August 5, 2014. The claimant admitted at the termination he swore at the minor by saying "pissing me off".

The claimant filed for unemployment insurance benefits with an effective date of August 3, 2014. The employer participated personally at the fact-finding interview on August 20, 2014 by Veronica Shea.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witness to the events for which he was terminated. The employer provided written statements to support its case but the statements do not provide as much weight because the witnesses cannot be cross-examined. The manager in charge that supported the claimant's version of events was not provided as a witness by the employer.

DECISION:

The representative's August 21, 2014 (reference 01) decision is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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